The 35 U.S.C. § 103 Rejection

According to M.P.E.P. § 2143,

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure.

Claims 1-8, 12-22 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Zhang et al.* (U.S. Patent No. 6,119,160) in view of *Ayyagari et al.* (U.S. Patent No. 6,278,701). This rejection is respectfully traversed.

Claim 1

Claim 1 of the claimed invention provides for "setting, in the SSG, the QoS bits of packets originated by the user in accordance with the QoS level for the user." As stated in the Office Action, "Zhang fails to teach setting the QoS bits accordance with the QoS level for the user. Ayyagari teaches setting the QoS bits accordance with the QoS level for the user (e.g. col. 3, lines 19-22) for guarantee the quality of service and connection to the user."

Upon a closer review of *Ayyagari et al.*, including this specific citation, there are subtle but important distinctions between *Ayyagari et al.* and the present invention. Specifically, *Ayyagari et al.* does not teach setting any QoS bits. First, *Ayyagari et al.* teaches a method for setting the QoS based on "the current voice load and data traffic level . . . [which are input] to the capacity model." (Col. 14, lines 3-4). This distinction may be clearly seen, for example, in claim 1 of *Ayyagari et al.*, where the method sets "the quality of service requirement for the

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plurality of data users based on the traffic from the plurality of users and the voice user quality of service requirement." (Col. 21, lines 62-64).

Second, *Ayyagari et al.* teaches controlling the QoS by decreasing the received power for data users until the FER target is satisfied. Specifically, "First, the QoS (FER and SAP) of voice users is fixed. . . . Next, the method chooses acceptable FER and SAP values for data users using the equations provided by the capacity model. The current voice load and data traffic level are inputs to the capacity model. Next, the method controls the received power of voice users so that all voice frames are received at equal power. This is accomplished by executing standard up/down power control commands from the base station. Then the received power for data users is controlled so that all data frames are received at the same power as the voice frames, again accomplished by executing standard up/down power control commands from the base station. Next, the received power for data users is decreased until the FER target . . . is reached." (Col. 13, lines 62-67, Col. 14, lines 1-14).

Thus, the acts of setting and controlling the QoS in *Ayyagari et al.* are not the same as the act of "setting" in the present claims. *Ayyagari et al.* does not teach setting any QoS bits as explicitly required by the claim.

Claim 3

Claim 3 provides for "using said Quality of Service filed to set the QoS bits within said packets transmitted by the user." As stated in the Office Action, "Zhang fails to teach the user service profile including a Quality of Service field and using the Quality of Service field to set QoS bits within the packets transmitted by the user. Ayyagari teaches the QoS and the setting QoS bits within the packet (e.g. col. 3, lines 19-22) for protection and guarantee of connection for user."

The same arguments as set forth above are equally applicable here. The acts of setting and controlling the QoS in *Ayyagari et al.* are not the same as the act of "setting" in the present claims. *Ayyagari et al.* does not teach setting any QoS bits as explicitly required by the claim.

Claim 5

Claim 5 provides for "setting said QoS bits within said packets belonging to said at least one packet flow received at the service selection gateway in accordance with said Quality of Service level." As stated in the Office Action, "Zhang fails to teach setting the QoS bits and assigning a particular Quality of Service level to at least one packet flow transmitted by the user within packets belonging to the at least one packet flow received at the service selection gateway in accordance with the Quality of Service level. Ayyagari teaches setting the QoS bits (e.g. col. 3, lines 19-22) and assigning a particular Quality of Service level (e.g. col. 3, lines 33-36) to at least one packet flow transmitted by the user within packets belonging to the at least one packet flow received at the service selection gateway in accordance with the Quality of Service level for controlling protecting in the communication and guarantee the service for the user."

The same arguments as set forth above are equally applicable here. The acts of setting and controlling the QoS in *Ayyagari et al.* are not the same as the act of "setting" in the present claims. *Ayyagari et al.* does not teach setting any QoS bits as explicitly required by the claim.

Claims 12 and 19

Claim 12 provides for "a packet modifier associated with said SSG, said packet modifier modifying the QoS bits of packets sent by the user to reflect the QoS level received for the user from the AAA server." Claim 9 provides for "a packet modifier associated with said SSG,

responsive to a QoS request by the user; setting a QoS bit field of packets sent by the user to the data communications network via the SSG." As stated in the Office Action, "Zhang fails to teach setting the QoS bits of packets. Ayyagari teaches setting the QoS bits for the user (e.g. col. 3, lines 19-22) for guarantee the quality of service and connection to the user."

The arguments set forth above are equally applicable here. The acts of setting and controlling the QoS are not the same as the act of "setting" in the present claims. *Ayyagari et al.* does not teach setting any QoS bits as explicitly required by the claim.

Given these differences, the cited prior art can not be said to render the claimed invention obvious. In view of the above, it is respectfully asserted that the claims are now in condition for allowance.

Remaining Dependent Claims

All other dependent claims depend from claims 1, 3, 5, 12, and 19 and thus include the limitations of the corresponding base claim. The base claims being allowable, the dependent claims must also be allowable.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.
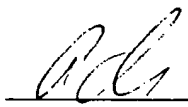
Request for Allowance

In view of the foregoing, reconsideration and an early allowance of this application are earnestly solicited.

If any matters remain which could be resolved in a telephone interview between the Examiner and the undersigned, the Examiner is invited to call the undersigned attorney to expedite resolution of any such matters.

Respectfully submitted,
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